

## SECTION 2 ADMINISTRATIVE PROVISIONS

### 2.1 Administration

- 2.1.1 Zoning Enforcement Agent. The Zoning Enforcement Agent is designated to be the Planning Department. The Planning Department supervises and enforces the provisions of these Regulations pursuant to MCA §76-2-210. This consists of, but is not limited to, issuing permits, enforcing violations and reviewing applications for variances, rezoning requests and amendments to these Regulations.
- 2.1.2 Code Compliance Specialist. The Gallatin County Code Compliance Specialist ensures compliance with the provisions of these Regulations in conjunction with the Planning Department. This consists of, but is not limited to, revoking permits, issuing cease and desist orders, requiring removal/ dismantling of Structures, determining compliance with these Regulations, and issuing fines. All decisions made by the Code Compliance Specialist follow the same administrative and appeals procedures as that of the Planning Department.
- 2.1.3 Board of Adjustment. Pursuant to MCA §76-2-221, the County Commission has appointed a five-member Gallatin County Consolidated Board of Adjustment (“BOA”). The Gallatin County Consolidated BOA shall have jurisdiction over all matters within the Belgrade Area Zoning District within the BOA’s powers. Those powers shall be:
- A. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of these Regulations.
  - B. To hear and decide variances (special exceptions) to these Regulations that will not be contrary to the public interest and where, owing to special conditions, a literal enforcement of the provisions of these Regulations will result in an unnecessary hardship, and so that the spirit of these Regulations is observed and substantial justice done.
  - C. In exercising the above mentioned powers, the BOA may, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or administrative determination made by the Planning Department or Code Compliance Specialist appealed and may make such order, requirement, decision, or determination as ought to be made and to that end shall have all of the powers of the officer from whom the appeal is taken, (MCA §76-2-223).
  - D. The concurring vote of three members of the BOA shall be necessary to grant a variance, reverse any order, requirement, decision, or determination of any such administrative official (MCA §76-2-224).
- 2.1.4 Belgrade City-County Planning Board. The 9-member Belgrade City-County Planning Board (Planning Board) consists of resident freeholders serving in an advisory capacity to

the County Commission. The Planning Board's role is to make recommendations on the revision of boundaries and the amendment of regulations (MCA §76-2-204 and MCA §76-2-205).

- 2.1.5 County Commission. The County Commission reserves the right to, after public notice and hearing, deny, approve or conditionally approve all conditional use applications.
- 2.1.6 Schedule of Fees. The County Commission sets fees for all applications; including but not limited to zone changes, Sign permits, official interpretations, and variances. The County Commission will not take action on an item until fees are paid in full.

## **2.2 Non-Conforming Lots, Uses and Structures**

- 2.2.1 Intent. Within the districts established by these Regulations, there are non-conforming Lots, uses and Structures that were lawful prior to the adoption of these Regulations but no longer conform to present Regulation requirements. It is the intent of these Regulations to establish a "grandfather" clause, allowing such Lots, uses and Structures to remain in their present state and location. However, such non-conformities shall not be enlarged upon, expanded, or extended, nor used as grounds for adding other Structures or uses prohibited by these Regulations.

Non-conforming uses are declared by these Regulations to be incompatible with allowed uses in the District. However, to avoid undue hardship, nothing in these Regulations shall be deemed to require a change in the plans, construction or designated use of any Structure on which actual construction lawfully began prior to the effective date of adoption or amendment to these Regulations or where a State Building Permit was obtained. Actual construction is hereby defined to include the placing of construction materials in permanent position and fastened in a permanent manner. Excavation, demolition, or removal of an existing building shall be deemed to be actual construction, provided such construction is carried on diligently and completed in a timely manner.

- 2.2.2 Non-conforming Uses of Land. Where, at the time of the adoption of these Regulations, lawful use of land exists which would not be allowed by these Regulations, the use may be continued so long as it remains otherwise lawful, provided:
  - A. A non-conforming use shall not be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the adoption and/or amendment of these Regulations, unless approval is granted by the County Commission after receipt of a CUP pursuant to Section 2.5.
  - B. A non-conforming use shall not be moved in whole or in part to any portion of the Lot or Parcel other than its original location at adoption and/or amendment of these Regulations.

- C. If any such non-conforming use of land ceases for any reason for a period of more than 180 days, any subsequent use of such land shall conform to these Regulations. If a seasonal use ceases for one season, then subsequent use of such land shall conform to these Regulations.
- D. Any non-conforming use of land superceded by an allowed use shall thereafter conform to these Regulations of the Sub-District in which it is located, and the non-conforming use may not thereafter be resumed.

2.2.5 Non-conforming Structures. Where a Structure exists at the effective date of adoption or amendment of these Regulations that could not be built under the terms of these Regulations by reason of restriction on Parcel, area, height, yards, its location on the Parcel, or ther requirements concerning the Structure, such Structure may be continued so long as it remains otherwise lawful, subject to the following provisions:

- A. A legal, non-conforming Structure shall not be altered or enlarged in any way which increases its non-conformity, unless approval is granted by the County Commission after receipt of a CUP pursuant to Section 2.5. A non-conforming Structure or portion thereof may be altered to decrease its non-conformity without approval from the County Commission.
- B. Should such non-conforming Structure or non-conforming portion of a Structure be destroyed by a catastrophic event, it may be reconstructed if it is rebuilt in substantially the same manner as it existed prior to destruction and does not require prior approval by the County Commission. Any Structure which is not substantially the same as the original Structure shall conform with the applicable provisions of these Regulations and applicable federal, state, and local building codes.
- C. Should such Structure be moved, it shall thereafter conform to these Regulations.
- D. Any legal non-conforming Structure altered to conform to the Regulations of the Sub-District in which it is located shall thereafter remain in conformance with these Regulations.
- E. Property owners of legally existing, non-conforming Structures may apply for a CUP pursuant to Section 2.5 for approval to change, alter, enlarge, or expand a non-conforming Structure prior to changes to the non-conforming Structure.

2.2.6 Non-conforming Uses of Structures. If a lawful use of a Structure, or of Structures and premises, exists at the effective date of adoption or amendment of these Regulations that would not be allowed in the District under the terms of these Regulations, the lawful use may be continued so long as it remains otherwise lawful provided that:

- A. An existing Structure devoted to a legal, non-conforming use shall not be enlarged, extended, constructed, or structurally altered unless approval is granted by the County

Commission after receipt of a CUP pursuant to Section 2.5. A non-conforming use of a Structure may change to an allowed use.

- B. Any non-conforming use may be extended to any other part of a Structure designed for such use, but no such use may be extended in any way to occupy land outside the Structure.
- C. Any legal non-conforming use superseded by an allowed use shall thereafter conform to the Regulations of the Sub-District in which it is located. The non-conforming use may not thereafter be resumed.
- D. If a non-conforming use of a Structure ceases for a period of 180 days, except for seasonal uses, any subsequent use of such Structure shall conform to the Regulations of the Sub-District in which it is located. If a seasonal use ceases the use for one season, then subsequent uses shall conform with these Regulations.

2.2.7 Repairs and Maintenance. On any non-conforming Structure or portion of the Structure containing a non-conforming use, work may be done on ordinary repairs and fixtures, wiring, plumbing, or repair and replacement of non-load-bearing walls, to the extent not to exceed 15% of the replacement value of the building in any one year, provided that such work does not increase the cubic content of the building. The 15% does not apply to an interior remodel that does not increase the cubic content or increase the building footprint of the Structure. Nothing in these Regulations shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official or other person qualified to make such a declaration.

2.2.8 Determination of Status of Non-Conforming Uses and Structures. It shall be the responsibility of the Planning Department and Code Compliance Specialist to determine the status of non-conforming land uses and Structures. If the Planning Department/Code Compliance Specialist determines that a use or Structure meets the applicable criteria in these Regulations and above, the use or Structure shall be deemed an approved non-conforming land use or Structure. The following procedures shall be followed to determine the status of non-conforming land uses and Structures:

- A. The owner of record of subject use/Structure shall make an application for a determination of status of a land use or Structure.
- B. It shall be the burden of the applicant to prove entitlement to approved non-conforming status by furnishing the Planning Department/Code Compliance Specialist with supporting information. Such information shall include, but not be limited to, septic or sewer hookup permits, building permits, business licenses, knowledge of the past history of the site, and dated photographs.

- C. The Planning Department/Code Compliance Specialist shall determine on a case-by-case basis whether a land use or Structure is an existing non-conforming use or Structure, and determine any terms or conditions of approval that may apply.
- D. Appeals of Planning Department/Code Compliance decisions may be submitted under the Administrative Appeal Process.

## **2.3 Site Plan Review and Approval**

2.3.1 Intent. Site plans are required for certain projects to identify and mitigate impacts early in the permitting process.

2.3.2 Requirements. Site Plan approval is required prior to Land Use Permit approval for the following:

- A. New construction of four or more Dwelling Units in a single multi-family Structure;  
or
- B. Construction of a Principal Structure for Offices, Retail, Personal and Business Services, industrial uses, or combinations of these uses; or
- C. Construction of an Accessory Structure 1200 square feet or greater for Offices, Retail, Personal and Business Services, industrial uses, or combination of these uses; or
- D. New use utilizing 10,000 or more square feet of exterior storage space for materials or goods; or
- E. Expansion of any of the above-mentioned uses by more than 50% of the total square footage of the Structure or 50% of the total square footage of exterior storage space for materials or goods, or expansion causing the building to exceed 10,000 square feet.
- F. Parking for more than 40 vehicles.

2.3.3 Site Plan Submittal Procedures. Five copies of the application shall be submitted to the Planning Department, on the required form, with appropriate fee, and the following information:

- A. General Information.
  - i. Name of project/development.
  - ii. Location/vicinity map.
  - iii. Name and mailing address of developer and owner, engineer/architect, landscape architect and/or planner.
  - iv. Date of plan preparation and changes.

- v. Zoning classification of site and adjacent properties.
- vi. Listing of specific land uses being proposed.
- vii. Total number, type and density of proposed residential dwelling units.
- viii. Complete, signed application.

**B. Site Plan Information.**

- i. Boundary line of property with dimensions.
- ii. Parcel size in gross acres and square feet
- iii. North point indicator.
- iv. Location, identification and dimensions of the following, both existing and proposed:
  - 1. Adjacent roads and road rights-of-way to a distance of 200 feet.
  - 2. On-site roads and rights-of-way.
  - 3. Ingress and egress points.
  - 4. On-site traffic movement.
  - 5. Utility easements.
  - 6. Structures.
  - 7. Watercourses, Agricultural Water User Facilities, and Wetlands.
  - 8. Federal Insurance Rate Maps designated floodplains.
  - 10. Parking Areas, Sidewalks, trails, bikeways, driveways, loading areas and docks.
  - 11. Any other applicable standards in Section 10.

- C. If the Planning Department determines that the proposed site plan is in compliance with the requirements of this section and all other applicable laws and regulations, approval shall be granted. Land Use Permit Submittals shall demonstrate compliance with the approved Site Plan.

2.3.4 Expiration. Site plan approval expires if a LUP is not obtained within 12 months of approval of the site plan.

2.3.5 Modification. Site plans may be modified by providing an updated site plan, with appropriate fee, to the Planning Department.

## **2.4 Land Use Permits**

2.4.1 Intent. Land Use Permits (LUP) are required prior to construction of new Structures, and for the expansion of existing Structures by more than 50% of the total square footage of the existing structure. An approved LUP shows conformity with Regulation requirements.

A. **Exceptions.** The following construction does not require a LUP:

- i. Agricultural Structures.* The construction of or addition to a new Agricultural Structure does not require a LUP.
  - ii. Accessory Structures Less than 400 sq. ft. and decks.* The construction of or the addition to an Accessory Structure that results in a footprint less than 400 sq. ft. and the construction or addition to a deck does not require a LUP but must be located outside any existing easements of record (utility, road, access, irrigation, pipelines, etc...).
  - iii. Fences/Walls.* The construction of, or addition to, a fence or wall may be built directly on or inside the property line and does not require a LUP.
- 2.4.2 Procedure. Landowners shall submit LUP applications on the required form, with the appropriate fee, to the Planning Department for new Structures as defined by these Regulations. The Planning Department inspects applications to determine if projects comply with provisions of these Regulations within 30 days of receipt of a complete LUP.
- 2.4.3 Septic Permits. Landowners shall provide proof of septic or sewer permits with those projects which contemplate new facilities or extension of existing facilities.
- 2.4.4 Appeals. Appeals of Planning Department decisions may be submitted under the Administrative Appeal Process.
- 2.4.5 Expiration. LUP's expire if building or work authorized by the LUP has not commenced within 12 months from the original permit date. Landowners must obtain a new permit, at one-half the fee, to re-commence work after the LUP expires.
- 2.4.6 Issuance of LUP's. No LUP shall be issued other than in accordance with the conditions and terms of the approved CUP and/or site plan.

## **2.5 Conditional Use Permits**

- 2.5.1 Intent. Conditional Use Permits (CUPs) are required prior to operation of a use which is not an allowed use, but allowed conditionally under these Regulations. Opencut Operations shall conform to Section 2.6.
- 2.5.2 Requirements. Structures or land within the District may not be used for any purpose unless such use is specifically listed as an allowed or conditional use in these Regulations. The Commission may grant a conditional use when they find:
  - A. The use conforms to the objectives of the Growth Policy and the intent of these Regulations.
  - B. The use will not adversely affect nearby properties or their occupants.

C. The use meets density, coverage, yard, height, and all other regulations of the district in which it is located, unless otherwise provided in these Regulations.

D. A public hearing, after notice has been given, has been held.

2.5.3 Conditional Approval. The County Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary to enhance the appearance of the property, to reduce any adverse effects on nearby property or residences, to preserve the character of an area, or to make it more acceptable in other ways. The conditions may include but are not limited to the following:

- A. Landscaping and its maintenance;
- B. Regulation of height;
- C. Regulation of lighting;
- D. Regulation of odors, smoke, dust, airborne particles, vibration, glare, heat, and noise;
- E. Regulation of placement of uses on the property;
- F. Regulation of Signs;
- G. Regulation of the length of time such use may be permitted;
- H. Regulation of the nature and extent of the use;
- I. Regulation of time of activities that have off-site impacts;
- J. Regulation of vehicular ingress and egress;
- K. Requirement of dedication or improvements of rights-of-way;
- L. Requirements for restoration of property;
- M. Special setbacks, yards, Open Spaces, buffers, fences and walls;
- N. Appropriate fire mitigation;
- O. Demonstration with applicable state and local fire, safety, and occupancy codes;
- P. Time schedule of proposed Development;
- Q. Impacts of increased traffic.

2.5.4 Procedure. All CUP applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the Planning Board who will make recommendations on the application to the County Commission. A hearing on the matter is scheduled before the County Commission, and the County Commission shall either approve or deny the application based on the facts. The County Commission may impose reasonable conditions, as it may deem necessary to mitigate project impacts. Use cannot commence until all conditions have been met.

2.5.5 Notice. Notice of the Planning Board and County Commission public hearings shall be published at least once 15 or more days prior to the County Commission hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail. The Planning Board and County Commission hearings may be published in one notice.

2.5.6 Revocation or Modification. The County Commission may revoke or modify a CUP under the following circumstances (under the procedure described above):



- A. If circumstances have changed substantially since original approval.
- B. Revocation or modification is necessary to protect the health, safety, or welfare of the area, or is necessary to preserve the integrity of existing use patterns in the area.
- C. The person holding the permit has not complied with the required conditions, or has not materially changed their position by detrimentally relying on said permit.

2.5.8 Expiration/Extensions. The County Commission may issue a CUP for a definite term. Extensions can be obtained through written application made 30 days prior to expiration, with accompanying fee, and notification sent to adjacent property owners. An extension shall be granted if no objection is received. A public hearing before the County Commission will be held if objection is received.

## **2.6 Opencut Operation Conditional Use Permits**

2.6.1 Intent. The general intent of this section is as follows:

- A. Promote responsible recovery and Processing of Opencut Operations by imposing reasonable conditions on Opencut Operations, including new mines or the expansion of existing mines;
- B. require Opencut Operations to provide adequate mitigation for significant adverse impacts to environmental and community resources caused by such Operations.
- C. regulate Opencut Operations and activities resulting from such Operations, including the offsite hauling of raw or processed materials;
- D. protect and perpetuate the taxable property value of the regulated property and adjacent and neighboring properties;
- E. provide for compatible uses on adjacent or neighboring properties;
- F. mitigate significant adverse impacts to state and county transportation facilities and systems resulting from Opencut Operations in order to provide for the continued safe operation of those facilities and systems;
- G. minimize health and safety risks to adjacent or neighboring properties resulting from Opencut Operations;
- H. protect surface and groundwater quality;
- I. prevent the degradation of soil, water, air and plant life from potential point and non-point pollution sources;

- J. prevent erosion resulting from Opencut Operations;
- K. prevent the unreasonable depletion and degradation of natural resources including air quality, water quality, wildlife habitat, among others; and
- L. protect the public from bearing the burden of impacts to public services and facilities by requiring Opencut Operations to contribute their appropriate share of the costs of impacts resulting from those activities.

2.6.2 General Requirements. A CUP shall be obtained prior to commencing work onsite for all new Opencut Operations or the expansion of existing Opencut Operations following the CUP procedure described below. Granting of a CUP is contingent upon fulfillment of conditions imposed by the County Commission pursuant to Section 2.6.5 and the requirements of Section 2.6.6.

CUPs shall be issued by the County Commission only upon finding:

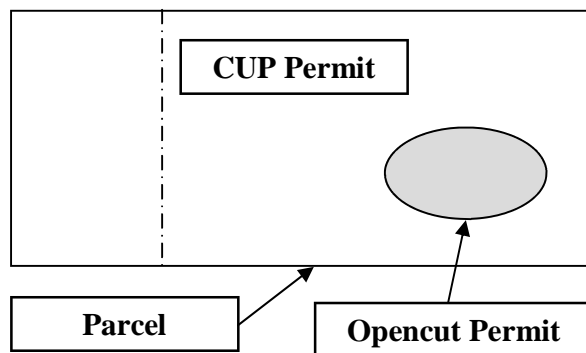
- A. The Opencut Operation conform to the objectives of the Growth Policy and the purposes and intent of these Regulations;
- B. The Opencut Operation will not have significant adverse impacts on nearby properties, property values, nearby land uses, or nearby residents;
- C. The Opencut Operation will not have significant adverse impacts on groundwater, streams, or wetlands or, if significant adverse impacts are identified, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;
- D. The Opencut Operation will not have significant adverse impacts on public services and facilities or, if significant adverse impacts are identified through data and conclusions generated during the review of the application, the Applicant shall enter into a written agreement with Gallatin County providing for mitigation, including the provision of financial security, for the identified impacts;
- E. The Opencut Operation meet all other applicable federal, state or local regulations, including the Requirements of Section 2.6.6 below; and
- F. A public hearing, after notice has been given, has been held.

2.6.3 Planned Gravel Mining Area. An applicant may apply for a phased CUP. The phased CUP application may request that mining be undertaken in specified phases. The phases may encompass an area greater than the Operator's existing DEQ Opencut permit. If the applicant modifies the scope of their DEQ permit a new application may be required under this regulation. Modifications that may trigger a new application include, but are not limited to, increased depth or volume of extracted material; changes in the ingress or egress to the property; or changes in the on-site Processing equipment. Any hearing required by this section shall be held only for the purposes of addressing the modifications.

Signage shall be required on the boundary of the phased CUP to inform land owners that future gravel Operations may take place adjacent to their property. When an applicant is granted a phased CUP signage must be placed on the property. Signage shall be placed on 3 feet by 5 feet weather resistant material. The signage must be up and visible for the length of the phased CUP, and must include the applicants' or Operators' phone number, and address. Signs shall be placed every 1,000 feet along the phased CUP property unless the County Commission approves fewer signs as part of the phased CUP process.

Example:

|                  |           |
|------------------|-----------|
| DEQ Permit Area: | 20 acres  |
| CUP Permit Area: | 120 acres |
| Parcel Area:     | 160 acres |



2.6.4 Permits, Terms of Issuance. A CUP may be issued for a revocable, temporary, permanent or term period. All CUPs issued for a definite term shall expire at the end of the term. Extensions can be obtained by following all procedures and payment of fees required for the original permitting.

2.6.5 Permits, Conditions. The County Commission may make the granting of a CUP subject to reasonable limitations or conditions as it may deem necessary to protect the public health, safety, morals, and general welfare, to mitigate significant adverse impacts, and to give effect to the purposes and intent of these Regulations. The conditions may include but are not limited to the following:

- A. Vehicular ingress and egress.
- B. Right-of-way.
- C. Lighting.
- D. Term of the Operation.
- E. Signs.
- F. Noise.
- G. Dust and other air quality parameters.
- H. Vibrations.
- I. Erosion.
- J. Protection of water quality and quantity.

- K. Regulation of the time of activities, which may include a provision for operating beyond the required hours of operation under special circumstances.
- L. Landscaping and maintenance thereof.
- M. Placement of uses on the property.
- N. Method of water disposal.
- O. Nature and extent of use.
- P. Noxious weeds.
- Q. Public safety measures, including fire protection.
- R. Submission of periodic monitoring reports.

2.6.6 Permits, Requirements. The following requirements apply to all new Operations or the expansion of existing Operations:

- A. Prior to commencing work under the CUP onsite, the applicant must:
  - i. Comply with all pre-operating conditions of approval as stated in the Findings of Fact and Order for the CUP, including, if required, entering into a written agreement with Gallatin County to provide financial guarantees in a form and amount acceptable to Gallatin County;
  - ii. Obtain a Land Use Permit (LUP). The LUP will only be issued by the Planning Department upon a determination by the Planning Department that the applicant has complied with all pre-operating conditions of approval in the CUP;
  - iii. Obtain all necessary state and federal permits for the Operations including but not limited to all permits listed in Section 5 of the Gallatin County Subdivision Regulations; permits required pursuant to federal and state water and air protection acts and, if required, a beneficial water use permit from the Montana Department of Natural Resources and Conservation.
- B. For the term of approval, conditions imposed pursuant to these Regulations shall constitute restrictions running with the land, shall apply and be adhered to by the owner of the land, its agents, successors or assigns, shall be binding upon the owner of the land, its agents, successors or assigns, shall be consented to in writing, and shall be recorded as such with the Gallatin County Clerk and Recorder's Office by the property owner prior to the issuance of any building permits, final Site Plan approval, LUP, or commencement of the conditional use.
- C. Operations shall have a Plan of Operations and Reclamation plan approved by MDEQ, and shall comply with those plans during the term of Operations for the DEQ Permitted Area.
- D. All CUP applications shall be accompanied by the applicable fees, established by the County Commission. No CUP shall be issued nor shall any action be taken on proceedings before the County Commission until such fees have been paid.

2.6.7 Conditional Use Permit Procedure.

- A. Applicants shall complete and submit 24 printed copies of the CUP application form and required information, an electronic copy on compact disc, and all applicable fees to the Planning Department;
- B. Prior to submitting an application, applicants shall participate in a pre-application meeting with the Planning Department to discuss the application and to identify any information not identified by the CUP application, which may be necessary when determining a project impacts. The pre-application meeting shall occur no sooner than 60 working days prior to submittal of the application. The applicant shall supply all information required in the application for an Opencut Operation CUP. Upon receipt of an application Staff shall have 20 working days to determine sufficiency and send a letter to the Applicant. Once sufficiency has been determined Staff shall have 60 working days to schedule a hearing before the County Commission. Staff may request an extension of the 60 working days if necessary;
- C. The Planning Department shall then review the application and conduct such investigation as necessary to ensure sufficient information is submitted to allow a decision on the application consistent with the intent and purpose of these Regulations;
- D. Notice of the public hearing for CUP's shall be published in a newspaper of general circulation within the County via a legal advertisement, and a display advertisement including a vicinity map of minimum size 3 inches by 5 inches ,no less than twice between 7 and 15 days prior to the hearing. Adjacent property owners of the property within 1000 feet of the parent parcel boundaries shall be notified by certified mail with all cost paid by the applicant. Applicant shall also provide postage for the courtesy first-class mail property owners between 1000 feet and ½ mile. Applicant shall post notice of the public hearing in a conspicuous manner at two prominent locations on-site or within close proximity to a public road, with their name and phone number clearly displayed on a minimum 8 ½ x 11 inch brightly colored weather resistant material;
- E. Upon completion of the investigation, the County Commission shall hold a public hearing to accept public comment on the CUP application. The County Commission may continue the hearing, if need be, to gather additional information. Thereafter, the County Commission shall render a decision based on Section 2.6.2 above;
- F. If possible, the Planning Department will schedule the hearing to occur simultaneously with any hearing MDEQ will have on the proposal;
- G. If an applicant obtains a CUP under these Regulations prior to obtaining MDEQ approval and this approval conflicts in any way with the MDEQ's Opencut Mining Program permit approval, the applicant may be required to amend the CUP application in order to comply with the MDEQ Opencut Mining Permit. Notwithstanding the above, if the conditions of approval under these Regulation conflict in any way with the MDEQ's Opencut Mining Program permit approval, the more stringent condition shall apply;

- H. If an applicant obtains approval under this these Regulations prior to obtaining approval from MDEQ, a condition of approval shall be that Gallatin County reserves the right to require additional conditions of approval addressing mitigation for impacts identified by MDEQ in the Final Environmental Assessment.
- 2.6.8 Authorized Use. For purposes of these Regulation, a conditional use permittee for Opencut Operations shall not engage in the conditionally permitted use on the site until all conditions of approval have been satisfied.
- 2.6.9 Revocation or Modification of Conditional Use Permits. A CUP may be revoked or modified by the County Commission under the following circumstances. Modification or revocation may occur only after publishing notice and providing the public and the applicant an opportunity to be heard.
- A. If conditions related to the original approval of the CUP have changed substantially from those at the time the permit was granted;
  - B. The County Commission determines the information provided by the Applicant and upon which approval of the CUP was granted was either inaccurate or incomplete;
  - C. Revocation or modification is necessary to protect the health, safety, and welfare of the area in which the subject property is situated or the residents of the County;
  - D. A conditional use permittee has not materially changed his position by detrimentally relying on the CUP; or
  - E. If the person holding the permit has not complied with the conditions upon which it was issued.
- 2.6.10 Recording. Evidence of approval of a CUP showing all conditions shall be recorded, at the applicant's expense, in the Office of the Gallatin County Clerk and Recorder at the time of issuance of a LUP.

## **2.7 Sign Permits**

- 2.7.1 Signs requiring a Sign Permit. Unless otherwise authorized by the terms of a zoning district, a Sign Permit is required prior to construction of permanent Signs, or replacement of an existing permanent Sign, subject to these Regulations. An approved Sign Permit shows conformity with the requirements of these Regulations.
- 2.7.2 Process. Prior to commencing construction, a landowner shall submit a Sign Permit application (with accompanying fee) to the Planning Department for new Signs as defined by these Regulations. The Planning Department inspects applications to determine if Signs comply with provisions of these Regulations.
- 2.7.3 Appeals. Appeals of Planning Department decisions may be submitted under the administrative appeal process in Section 2.10.

- 2.7.4 Expiration. Sign Permits expire if building or work authorized by the permit has not commenced with 12 months from the original permit date. Landowners must obtain a new permit to re-commence work after permit expires.

## **2.8 Variances**

- 2.8.1 Intent. It is the intent of this section to provide a process for relief from the occasional inequities created by the physical standards of these Regulations when such standards create a substantially unequal burden on a particular Parcel of land in a fashion that would otherwise prevent the reasonable use of the property owing to physical circumstances unique to that Parcel. In addition, the intent of this section is to prohibit the granting of variances that would be contrary to the public interest and endanger public health, safety and welfare. No variance shall be granted to allow the use or Development of property for a purpose not authorized within the Sub-District in which the proposed Development would be located.
- 2.8.2 Criteria. In granting a variance, the BOA shall issue findings setting forth factual evidence that the variance:
- A. Will observe the intent and purpose of these Regulations and the Growth Policy, and do substantial justice.
  - B. Will not be injurious to the public health, safety, and general welfare.
  - C. Will not be contrary to and will serve the public interest.
  - D. Is necessary, owing to conditions unique to the property, to avoid unnecessary hardship which would unavoidably result from the enforcement of the literal meaning of these Regulations:
    - i. Hardship does not include self-imposed difficulties arising from actions by the applicant or previous predecessors in interest; and
    - ii. Hardship does not include potential for greater financial returns;
    - iii. Conditions unique to the property may include slope, presence of Watercourses, after-the-fact imposition of additional regulations on previously lawful Parcels, and governmental actions outside of the owner's control.
  - E. Is the minimum relief necessary to provide reasonable use of the property.
- 2.8.3 Procedure. All variance applications shall be submitted to the Planning Department on the required form with the accompanying fee. A hearing on the matter is scheduled before the BOA, and the BOA shall either approve or deny the application based on the facts. The BOA may impose reasonable conditions, as it may deem necessary to mitigate

project impacts. The concurring vote of three members of the BOA shall be necessary to decide in favor, wholly or partly, of any variance from these Regulations.

- 2.8.4 Notice. Notice of the public hearing shall be published at least once fifteen (15) days prior to the hearing in a newspaper of general circulation. Adjacent property owners shall be noticed by certified mail.

## **2.9 Amendments**

- 2.9.1 Intent. These Regulations and the boundaries of the zoning map may be amended or revised whenever the public health, safety and general welfare requires such amendment. Amendments shall follow the procedure prescribed by MCA §76-2-201 et seq., and these Regulations.

- 2.9.2 Procedure. An amendment may be initiated by submittal of one of the following to the Planning Department:

- A. The petition of (1) or more landowners in the District. The petition shall be filed on the required application and accompanied by the required fee; or
- B. Resolution of intention of the County Commission; or
- C. Resolution of intention of the Planning Board.

- 2.9.3 Planning Board. The Planning Board shall make recommendations on the revision of boundaries and the amendment of these Regulations to the County Commission.

- 2.9.4 Hearing. The County Commission shall consider all proposed amendments at a public hearing. The County Commission may adopt the amendment in accordance with the procedure prescribed by MCA §76-2-205.

- 2.9.5 Notice. Notice of the public hearing shall be published in a newspaper of general circulation pursuant to MCA §76-2-205.

## **2.10 Appeals Process**

- 2.10.1 Appeal from Planning Department/Code Compliance Specialist. The Board of Adjustment shall hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination by the Planning Department, and reverse or affirm, wholly or partly, or modify the order, decision, or determination of the Planning Department.

- A. An appeal from any final order, decision, or determination of the Planning Department may be made to the Board of Adjustment within 30 days after the decision is filed and served or, in the case of official interpretations of these Regulations and/or the official Zoning Map, within 30 days from the official interpretation. The appeal must be submitted in writing to the Planning Department via certified mail or hand delivery, be



accompanied by the appeal fee as established by the Commission, and state the basis for the appeal.

- B. Upon receipt of appeal, a public hearing shall be scheduled before the applicable Board of Adjustment. Notice of the public hearing shall be sent to adjacent property owners via certified mail, and be published in a newspaper of general circulation at least once 15 days prior to the hearing.

2.10.2 Appeal from Board of Adjustment. Pursuant to MCA § 76-2-227, a decision from the Board of Adjustment may be appealed to the Eighteenth Judicial District Court within 30 days from the date the decision is filed in the office of the board.

2.10.3 Appeal from County Commission. Those aggrieved by a decision made by the County Commission may present to the Eighteenth Judicial District Court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within 30 days of a decision made by a County Commission at a public hearing.

## **2.11 Complaints and Enforcement**

2.11.1 Complaints. Any person may file a signed, written complaint with the Planning Department or Code Compliance Specialist addressing an alleged violation of these Regulations. The complaint shall fully describe the facts supporting the complaint. Upon receipt of a written, signed complaint or discovery of an alleged violation by other means, the Planning Department/Code Compliance Specialist may record and investigate an alleged violation, and determine if a violation exists. If the Planning Department/Code Compliance Specialist determines a violation exists, they may take appropriate action to resolve the violation.

2.11.2 Investigations. When investigating an alleged violation, the Planning Department or Code Compliance Specialist shall review these Regulations and other applicable information, regulations, rules or laws regarding the alleged violation. The Planning Department/Code Compliance Specialist may inspect the alleged violation from public right-of-way, from a neighboring property or the site itself if permission has been granted for the inspection. Permission for access is assumed in the event an alleged violator has a permit application pending with the Planning Department. The investigator shall document the inspection with written notes and/or photographs as appropriate.

2.11.3 If the Planning Department/Code Compliance Specialist finds any violation(s) of these Regulations, including conditions of approval for any permit, the Planning Department/Code Compliance Specialist shall attempt to obtain voluntary compliance pursuant to MCA § 76-2-210. If efforts to obtain voluntary compliance are not successful, the Planning Department/Code Compliance Specialist may serve a written notice on persons responsible for corrective action necessary to remedy the violation(s). If 30 days after service of the notice the violation(s) has not been remedied or an

agreement reached to remedy the violation(s), then further enforcement action may be taken as provided by these Regulations and at law.

- A. The Planning Department/ Code Compliance Specialist may: (i) revoke any Land Use Permit; (ii) issue orders to obtain after-the-fact permits; (iii) issue cease and desist orders requiring cessation of any building, moving, alteration or use which is in violation of these Regulations, (iv) require mitigation and/or corrective action, which may include orders to dismantle or remove noncompliant Structures to remedy the violation; (v) determine when compliance has been achieved and approve permits for Structures brought into compliance with these regulations; and/or (vi) take any other action authorized by these Regulations and law to insure compliance with, or prevent violation of its provisions.
  - B. Persons liable for violations and compliance with any order, determination, decision, fine, penalty, proceeding, and remedial action shall include without limitation, any and all owners, tenants, leaseholders, or other persons or entities that commits, maintains, participates, assists, causes or contributes to such violation; hereinafter “persons.”
  - C. The owner of any building, Sign, premises, or part thereof, shall be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Planning Department/Code Compliance Specialist. In addition to the owner, any person as defined herein shall each, jointly and severally, be held liable for any and all violations, remedies, remedial actions, fines, penalties, enforcement actions or proceedings, and shall be required to comply with any order, determination and decision of the Planning Department.
  - D. Gallatin County and/or the Planning Department/Code Compliance Specialist shall have the right to proceed or take action jointly or severally against any or all persons, and the failure to proceed or take action against any person or persons shall not constitute a waiver of any rights or remedies whatsoever against any person or persons.
- 2.11.4 Administrative Fine. In addition to the above, and upon a recommendation from the Planning Department/Code Compliance Specialist, the County Commission may, after a public meeting, and assess violators fines of up to \$500.00 per violation for noncompliance. Each day of violation may be considered a separate offense. When determining the amount and duration of the fine, the County Commission shall consider the nature, circumstances, extent and gravity of the violation, any prior history of such violations, the degree of culpability, and such other matters as justice may require. In addition, the violator may be required to pay administrative costs associated with the investigation. If the fine is not paid, Gallatin County may seek a lien against the real property where the violation(s) have occurred.

- 2.11.5 Injunction. The Commission, through the County Attorney or otherwise, may bring an action in the name of Gallatin County in the District Court to enforce these Regulations, which may include without limitation injunctive relief.
- 2.11.6 Remedies, Cumulative. The remedies provided for herein shall be cumulative and not exclusive.